

020538
Permanent Record
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Introduced by Hindman
First Reading 1-4-10 Second Reading 1-19-10
Ordinance No. 020538 Council Bill No. B 5-10

AN ORDINANCE

authorizing the City Manager to execute a cooperative agreement with Boone County Regional Sewer District relating to sewer construction in the Grindstone Creek Watershed, Upper North Fork, Hominy Branch Watershed and Little Cedar Creek Watershed; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a cooperative agreement with Boone County Regional Sewer District relating to sewer construction in the Grindstone Creek Watershed, Upper North Fork, Hominy Branch Watershed and Little Cedar Creek Watershed. The form and content of the agreement shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this 19th day of January, 2010.

ATTEST:

[Signature]
City Clerk

[Signature]
Acting Mayor and Presiding Officer

APPROVED AS TO FORM:

[Signature]
City Counselor

**GRINDSTONE CREEK WATERSHED – UPPER NORTH FORK; HOMINY BRANCH
WATERSHED; LITTLE CEDAR CREEK WATERSHED COOPERATIVE
AGREEMENT**

This agreement is entered into this 20th day of January, 2009¹⁰, between the Boone County Regional Sewer District, a common sewer district organized pursuant to Chapter 204 RSMo ("District") and the City of Columbia, MO, a municipal corporation ("City").

WHEREAS, District currently provides sanitary sewer service to the Fairway Meadows Subdivision and Analytical Biochemistry Laboratories (A Missouri Corporation), including a pump station located in an Easement for Sewer Purposes recorded in Book 1603, at Page 723, Records of Boone County, Missouri; and

WHEREAS, District currently provides sanitary sewer service to Frank Stanton Subdivision, Golf View Gardens Subdivision, Copper Creek Subdivision, the Fabick Caterpillar dealership, and other property in the service area, including the Shaw Wastewater Treatment Plant located on land conveyed by Quit Claim Deed to the District recorded in Book 1051, Page 496, Records of Boone County, Missouri; and

WHEREAS, City operates a regional wastewater treatment plant which currently provides wastewater treatment services for the portion of the Fairway Meadows Subdivision and Analytical Biochemistry Laboratories served by said pump station; and

WHEREAS, City operates a regional wastewater treatment plant which is capable of providing wastewater treatment services for Frank Stanton Subdivision, Golf View Gardens Subdivision, Copper Creek Subdivision, the Fabick Caterpillar dealership, and other property in the service area served by said Shaw Wastewater Treatment Plant; and

WHEREAS, it is feasible to construct a sewer connecting the portion of Fairway Meadows Subdivision served by said pump station to a different part of the City's sewer collection system; and

WHEREAS, it is feasible to construct a sewer connecting Frank Stanton Subdivision, Golf View Gardens Subdivision, Copper Creek Subdivision, the Fabick Caterpillar dealership, and other property in the service area served by said Shaw Wastewater Treatment Plant to the City's sanitary sewer collection system; and

WHEREAS, the sanitary sewer connection will allow for the closure of the pump station serving a portion of Fairway Meadows Subdivision and Analytical Biochemistry Laboratories; and

WHEREAS, the sanitary sewer connection will allow for the closure of the wastewater treatment plant serving Frank Stanton Subdivision, Golf View Gardens Subdivision, Copper Creek Subdivision, the Fabick Caterpillar dealership, and other property in the service area; and

WHEREAS, the Columbia Public School District intends to build a new high school in the watershed of the North Fork of the Grindstone Creek and the connecting sewer to be constructed pursuant to this agreement will provide sanitary sewer service to the new high school; and

The parties agree as follows:

1. The scope of this agreement is limited to those geographic areas within the "Boundary of area covered by agreement" on the attached Exhibit A, entitled "Watersheds – Grindstone Creek – Upper North Fork, Little Cedar Creek, Hominy Branch."
2. The following definitions apply to this agreement:

District's "Service Area" means that area shown on the attached Exhibit A as "Existing BCRSD Wholesale Service", "Existing and Proposed BCRSD Customers" and "New BCRSD Customers."

City's "Service Area" means that area shown on the attached Exhibit A as "Proposed City of Columbia Customers."

"Connecting sewer" means the sewer to be constructed pursuant to this agreement connecting the District's lift station and wastewater treatment plant to the City's sanitary sewer collection system.
3. The City shall prepare the plans for construction of the connecting sewer. The City shall develop a facility plan and be responsible for obtaining Missouri Department of Natural Resources approval of said facility plan. City shall prepare specifications and bid documents for construction of the connecting sewer in accordance with state revolving fund regulations.
4. The City shall acquire all easements necessary for construction of the connecting sewer.
5. The City shall bid the project pursuant to established City policy. City, however, shall not bid the project until said project has been approved and authorized for District participation by the Missouri Department of Natural Resources for state revolving fund purposes. The District shall reimburse the City for 43.93%, with a not to exceed amount of \$600,000.00, of the cost to construct the connecting sewer which includes construction, engineering, subsurface exploration to determine rock excavation quantities, and easement acquisition; but District shall not pay for easement acquisition related to trail easements. District shall own the connecting sewer from Station 34 + 82.51 to Station 62 + 11, as shown on the construction plans; this section of the connecting sewer representing 43.93 % of the connecting sewer. This section of the sewer trunk line shall be owned by the District but shall be maintained by the City and shall be under the City's control. The City shall maintain and operate the connecting sewer at its cost in accordance with established City policies subject to the terms and conditions of this agreement. The District at its cost shall close the above described lift station currently serving Fairway Meadows and District at its cost shall close the Shaw Wastewater Treatment Plant. City will impose no

connection fees upon District customers connecting to this sewer trunk line.

6. The City shall provide construction management services associated with construction of said connecting sewer.
7. District shall maintain all public sewers in its service area in compliance with City sewer standards and plumbing codes. City shall inspect the public sewers within the service area prior to construction of the connecting sewer to determine the existing conditions and to identify any required repairs. District shall correct any deficiencies in the service area collection system prior to connection to the City's sewer system. City shall have the right to periodically inspect the public sewers in the service area for as long as the collection system is connected to the City's sewer system.
8. District agrees to pay City a service fee for each District customer in the service area. This fee shall be equivalent to 0.80 times what the customer would pay if the customer were connected to City sewer service within the corporate limits of the City. The City may change the percentage of service fee but shall notify the District 180 days prior to the beginning of the District's fiscal year of any intent to increase the percentage and shall provide documentation substantiating such changes with its notice of its intent to make such change. Any increase in the percentage of service fee must be based on an increase in the percentage of the City's sewer service charge attributable to the City's calculated actual cost for providing wastewater treatment and pumping and major trunk and interceptor line maintenance.
9. City shall submit to the District a monthly bill which shall represent the sum of the service fees for each customer of District being served by this agreement as calculated by City on the basis of the water records provided by District.
10. District shall furnish City monthly water usage records for its customers in the service area for billing purposes. If a District customer in the service area occupies a unit which was unoccupied during the preceding month, City will calculate the water usage for billing purposes in the same manner as it calculates the water usage for City customers in the same situation.
11. District shall promptly notify City when customers in the service area have been connected to the District's collection system. District shall promptly inform City whenever customer changes occur in the service area.
12. City shall have the option of obtaining transfer of District customers within the city limits of the city covered under this agreement or any other written connection agreement between the City and District as mutually agreed upon, provided that (a) District has achieved a 3% annual growth rate in new customers, and (b) customers over the additional 3% are transferable provided the remaining number of District customers after transfer will generate sufficient revenue to pay the District's operation, maintenance, and replacement costs as determined by the District's board of trustees each year in its annual budget. City shall pay to District a one time

purchase amount for the transfer of customers equal to District's then current bonded indebtedness, which is the outstanding principal plus interest over the term of the then current outstanding principal, divided by the total number of District customers, multiplied by the number of customers to be exchanged. The term "new District customers" shall exclude any additional sewer customers acquired by District from municipal systems or District boundary changes. Priority in transfer shall be given to: 1) Analytical Biochemistry Laboratories Incorporated located at 7200 East ABC Lane, Columbia, Missouri, and 2) groups of District customers which have been within the City's limits the longest time period and decisions concerning groups of customer transfers shall be based upon promoting efficiency in City and District operations and maintenance and management of customer accounts.

13. All new development, within the areas designated "New BCRSD Customers" and "Proposed City of Columbia Customers" on the attached Exhibit A shall before receiving City or District sewer service, be required to annex to the City (if contiguous and compact to city limits) or enter into an agreement with the City to annex (if not contiguous and compact to city limits). Property owners entering into annexation agreements shall be required to develop their property according to City standards. City and District shall not provide sanitary sewer services to those property owners who choose not to annex into the City within the areas designated on the attached Exhibit A. Property owners in the areas designated "Existing and Proposed BCRSD Customers" on the attached Exhibit A shall not be required to annex their property or develop to City standards in order to receive sewer service from the District.
14. City agrees to defend, indemnify and hold harmless the District in any lawsuit involving annexation into the City. The District agrees to provide all documents and personnel as requested in support of this agreement. In any dispute, involving the annexation provisions in Section 13 above, including disputes which result in litigation, City shall defend, indemnify and hold District harmless for any and all costs incurred by District in excess of \$10,000.00. Such costs shall include, but not be limited to, attorney's fees and any monetary award for damages determined by agreement, arbitration or court judgment. District shall provide City with all information deemed necessary by City to facilitate compliance with the indemnity provided herein.
15. City and District shall oppose any application for a Missouri Department of Natural Resources permitted discharge from a new facility or expansion of an existing facility into any part of the geographic areas within the "Boundary of area covered by agreement" shown on Exhibit A, unless it can be shown that it is more cost-effective to build a wastewater treatment facility than connect to public sewers. Additionally, any new development to be served by said application for a permitted discharge shall not be required to annex into the City of Columbia.
16. City shall be responsible for providing adequate capacity in the North Grindstone Outfall Sewer down stream of the service area shown in Exhibit A of this

Agreement to handle all reasonably anticipated users within the geographic areas within the "Boundary of area covered by agreement" shown on Exhibit A. Reasonably anticipated users are users that do not generate wastewater in quantity greater than normal domestic flows or that contains any contaminants in concentrations greater than normally found in domestic wastewater.

District shall not connect any nonresidential sewer customer, without the prior approval of City, which generates wastewater in quantity greater than normal domestic flows or which contains any contaminants in concentrations greater than normally found in domestic wastewater.

City shall refuse service to any anticipated new or expanding user, which could be reasonably expected to cause capacity shortfalls in service to areas designated "Existing BCRSD Wholesale Service", "Existing and Proposed BCRSD Customers" and "New BCRSD Customers" on Exhibit A.

District shall not, without the written consent of City, pump sewage from an area that is outside of the geographic areas within the "Boundary of area covered by agreement" on Exhibit A.

City shall not, without the written consent of District, pump sewage to sewers in the territory described by this agreement from areas outside the territory described by this agreement.

17. District shall not connect sewers serving land outside the District's Service Area to sewers within the District's Service Area without the prior written consent of City.
18. City shall not connect sewers to the District's sewers without the prior written consent of the District.
19. The initial term of this Agreement shall be twenty (20) years beginning on the date first shown in this Agreement. Thereafter, this agreement shall automatically be renewed for successive terms of twenty (20) years unless it is terminated pursuant to the provisions of this paragraph. After the initial term of this Agreement, the parties shall have the right to terminate this Agreement with cause upon giving five (5) years written notice to the other party; provided, however, that no customer may be terminated from sewer service except upon nonpayment of user fees and charges, violation of sewer use regulations or violation of environmental or public health laws or regulations.
20. The parties hereto agree that this agreement was negotiated at arm's length and that for purposes of interpretation neither City nor District shall be deemed drafter of this agreement. In the event any portion of this agreement is found to be unlawful or unenforceable, the remaining terms and conditions of this agreement shall remain in full force and effect between the parties.

21. This agreement is not intended to confer any rights or remedies on any person other than the parties.
22. Disputes regarding this agreement that cannot be amicably resolved between the parties directly or through mediation may be litigated in the Boone County Circuit Court, but no circuit court action may be filed unless the parties through their authorized representatives have met and conferred, or engaged in mediation in an attempt to resolve the dispute in good faith.
23. The financial obligations of the parties to this agreement are subject to annual appropriations being made available by them to pay said obligations, and City and District hereby agree to make all reasonable efforts to assure that financial obligations are timely paid as they come due.
24. Any amendments to this agreement shall be in writing.

25. Both parties will enact and enforce sewer use and user charge ordinances which are acceptable to the Missouri Department of Natural Resources. Both parties agree to adopt user charge ordinances which will proportionately recover all operation, maintenance and replacement costs for which each party is responsible. Both parties will enact industrial pre-treatment ordinances as appropriate. Both parties shall comply with all Department of Natural Resources regulations in performing its obligations under this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

CITY OF COLUMBIA, MISSOURI

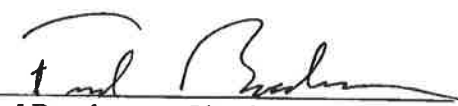
By:


H. William Watkins, City Manager

ATTEST:

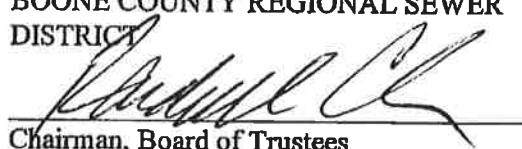

Sheela Amin

APPROVED AS TO FORM:



Fred Boeckmann, City Counselor

BOONE COUNTY REGIONAL SEWER
DISTRICT

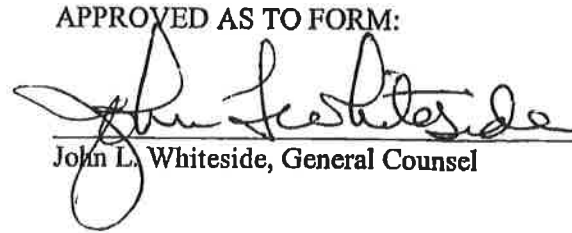
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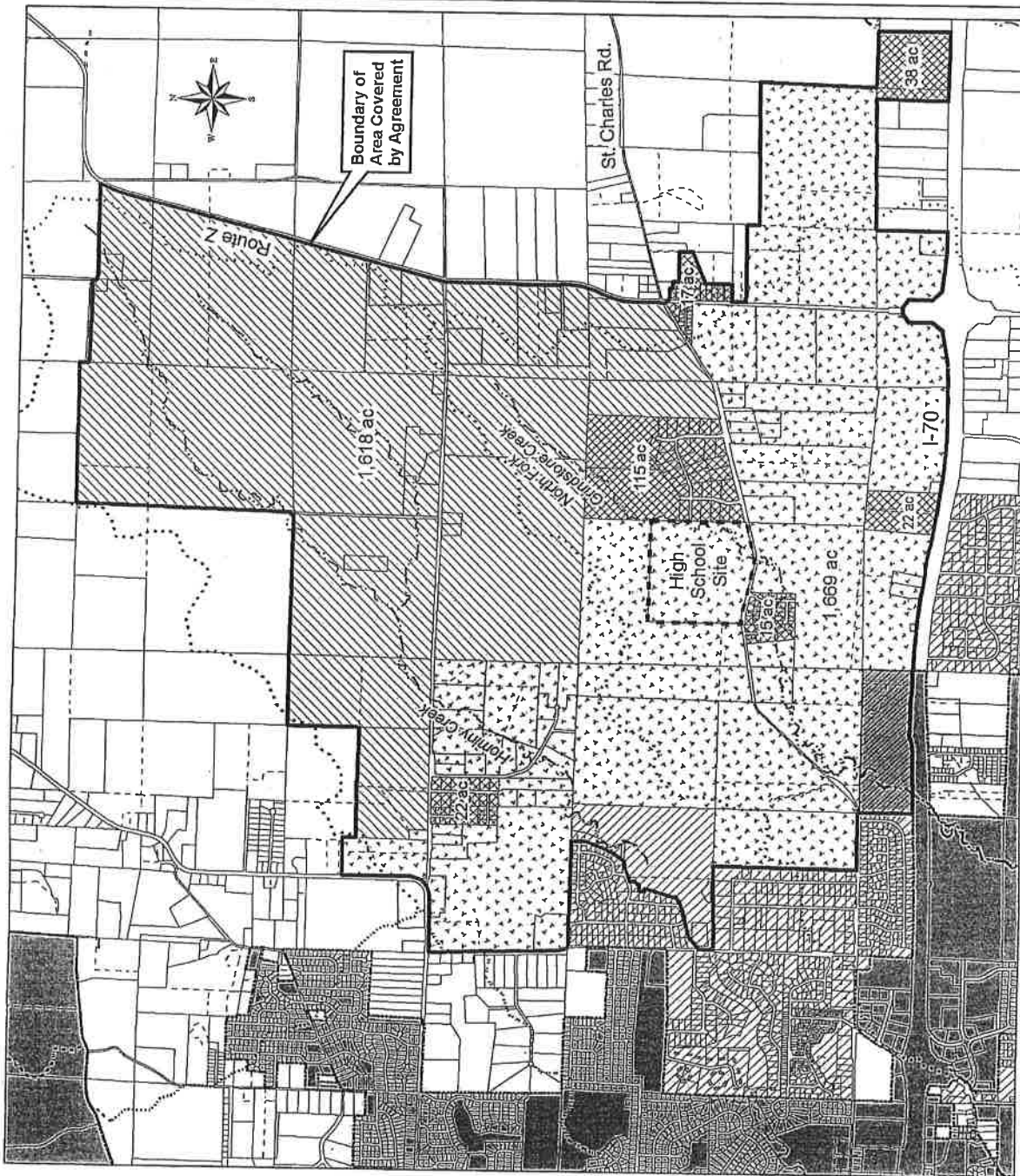

Chairman, Board of Trustees

ATTEST:








Secretary, Board of Trustees

APPROVED AS TO FORM:


John L. Whiteside, General Counsel

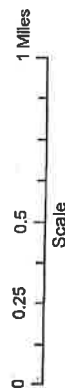


Legend

-  Existing BCRSD Wholesale Service
-  Existing and Proposed BCRSD Customers
No Annexation or Development to City Standards
Total Area = 230 acres
-  New BCRSD Customers
Annex and Develop to City Standards
Total Area = 1,618 acres
-  Proposed City of Columbia Customers
Total Area = 1,669 acres
-  City Limits
-  Watershed Boundary

Watersheds

Grindstone Creek - Upper North Fork
Little Cedar Creek
Hominy Branch



Date: 07-24-09

Exhibit A Boone County Regional Sewer District

1314 North Seventh Street
Columbia, Missouri 65201